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9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

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12  
13 UNITED STATES OF AMERICA

14 Plaintiff,

15 v.

16 JUAN AGUILAR-CORTEZ,

17 Defendant.  
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CR. NO. 2:95-0020 WBS

ORDER RE: MOTION TO VACATE

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21 On July 19, 2017, defendant Juan Aguilar-Cortez filed a  
22 Motion to Vacate, in which he requests that the court reduce his  
23 sentence of life without parole to time served. (Docket No.  
24 303.) In his view, such a sentence is warranted given his good  
25 behavior in prison, lack of violence or guns in his crimes, and  
26 his lack of a significant prior criminal record. He relies on  
27 the district court case United States v. Holloway, 68 F. Supp. 3d  
28 310 (E.D.N.Y. 2014), for the proposition that "district courts

1 have the discretion, inherent in our American system of justice  
2 to reduce a defendant's sentence in the interest of fairness,"  
3 which he describes as the "Holloway Doctrine." He does not claim  
4 any error, constitutional or otherwise, in the proceedings  
5 underlying his three federal drug trafficking convictions or his  
6 resulting three concurrent life sentences.

7 The court notes that it previously dismissed  
8 defendant's motion to vacate filed July 2, 2015 (Docket No. 262),  
9 as defendant had filed several successive petitions under 28  
10 U.S.C. § 2255 and there was no indication that petitioner had  
11 sought or obtained the requisite certificate from the Ninth  
12 Circuit authorizing him to file a successive § 2255 motion.  
13 (Order Feb. 16, 2016 (Docket No. 291)) (citing, inter alia,  
14 Burton v. Stewart, 549 U.S. 147, 149 (2007) (per curiam)  
15 (directing the district court to dismiss an unauthorized habeas  
16 petition for lack of jurisdiction)); 28 U.S.C. § 2255(h) ("A  
17 second or successive motion must be certified as provided in  
18 section 2244 by a panel of the appropriate court of appeals . . .  
19 ."); Ezell v. United States, 778 F.3d 762, 765 (9th Cir. 2015)  
20 ("If the petitioner does not first obtain [the Ninth Circuit's]  
21 authorization, the district court lacks jurisdiction to consider  
22 the second or successive application.") (citation omitted)).<sup>1</sup>

23 Here, even assuming that defendant's instant Motion is  
24 not a successive petition barred under 28 U.S.C. § 2255(h), the

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25 <sup>1</sup> Defendant also filed a § 3582 motion, which the court  
26 denied because defendant was sentenced based on the statutory  
27 mandatory minimum sentence (a mandatory life sentence based on at  
28 least two prior felony drug convictions and the quantity of drugs  
involved), and not based on a sentencing range that had been  
lowered by the Sentencing Commission. (Docket No. 261.)

1 court has no authority to grant the requested relief. As  
2 discussed by one other court faced with a similar motion, a  
3 motion to reduce a sentence under the "Holloway Doctrine" "is not  
4 pursuant to any valid basis under Fed. R. Crim. 35, or 18 U.S.C.  
5 § 3582(c), and the court has no inherent power to reduce  
6 defendant's sentence." United States v. Smith, Case No. 2:06-cr-  
7 42-FtM-29SPC, 2017 WL 2889307, \*2 (M.D. Fla. 2017); see also  
8 United States v. Mendoza, 118 F.3d 707, 709 (10th Cir. 1997) ("A  
9 district court does not have inherent authority to modify a  
10 previously imposed sentence; it may do so only pursuant to  
11 statutory authorization.").

12 Indeed, the Holloway court's vacating of the  
13 defendant's sentence was not based on the court's inherent power  
14 to reduce a sentence in the interests of fairness or for any  
15 other reasons. Rather, it was the United States' decision to  
16 dismiss two counts against the defendant which allowed the  
17 Holloway court to vacate the defendant's sentence. Holloway, 68  
18 F. Supp. 3d at 314-16 (noting that "there were good reasons to  
19 revisit Holloway's excessive sentence but no legal avenues or  
20 bases for vacating it," leading the court to request that the  
21 government consider agreeing to vacate at least some of  
22 Holloway's convictions); see also Smith, 2017 WL 2889307, at \*2  
23 (denying motion to reduce sentence where government had not  
24 agreed to a reduction, noting that the defendant in Holloway  
25 "would not have been eligible for relief without the government's  
26 agreement").

27 Here, the government has not agreed to a dismissal of  
28 any counts against defendant in this case. Nor has the

1 government agreed to a reduction of defendant's sentence. Thus,  
2 even assuming that this court agreed that a reduction in sentence  
3 was appropriate in light of defendant's circumstances and in the  
4 interest of fairness, the court lacks authority to grant such a  
5 reduction. Accordingly, the court must deny the Motion.

6 IT IS THEREFORE ORDERED that defendant's Motion to  
7 vacate his sentence (Docket No. 303) be, and the same hereby is,  
8 DENIED.

9 Dated: October 13, 2017



10 **WILLIAM B. SHUBB**  
11 **UNITED STATES DISTRICT JUDGE**  
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